

making local deliveries under the provisions of the plan during the most recent representative annual period as defined in § 551.8(g)(1), the weekly hours worked and the average workweek of such employees during such period and, if there are any significant variations in the number of such employees so employed in the particular workweeks within the period, a full statement of the facts concerning such variations, information as to any workweeks in which any employees compensated under the plan devote less than eighty percent of their worktime to duties as drivers or drivers' helpers making local deliveries; and

(c) A statement of the facts and reasons based on the history and application of the plan which are relied upon to support a finding that the plan has the general purpose and effect of reducing the hours worked by drivers or drivers' helpers covered by its provisions to, or below, the statutory maximum workweek applicable to them under the Act.

§ 551.6 Action on petition.

(a) Upon the filing of a petition as provided in this part, the Administrator will give consideration thereto, and make any further inquiry into the facts that he may deem necessary. The Administrator may require, before taking further action thereof, that notice of the petition be given to affected employees in such manner as he shall determine to be appropriate to afford them an opportunity to submit any facts or reasons supporting or opposing the finding prayed for in the petition. If the Administrator determines that the petition fails to satisfy any of the requirements of this part, he shall deny the request for a finding or, in his discretion, advise petitioners that further consideration will be given to the submission if the deficiencies are remedied within a specified time. No further consideration will be given, however, to a request for a finding if the Administrator determines that the factual situation as described in the petition is not one in which authority to make the finding is provided by section 13(b)(11) and this part.

(b) If the Administrator determines that a petition meets all requirements

of this part and if he is satisfied from consideration of all relevant facts and information available to him that the wage payment plan submitted has, within the meaning of section 13(b)(11) of the Act and this part, the general purpose and effect with respect to drivers or drivers' helpers making local deliveries, who are employed pursuant to its provisions on the basis of trip rates or other delivery payment plan, of reducing the hours worked by such employees to, or below, the maximum workweek applicable to them under section 7(a) of the Act, the Administrator will make an appropriate finding to this effect, and notify the petitioner; otherwise the request for such a finding will be denied.

§ 551.7 Finding.

(a) A finding by the Administrator under paragraph (b) of § 551.6 that a wage payment plan has the purpose and effect required for exemption of employees under section 13(b)(11) and this part shall be effective in accordance with its terms upon notification to petitioners as provided in § 551.6(b). The finding shall include such terms and conditions and such limitations with respect to its application as the Administrator shall deem necessary to ensure that no exemption will be based thereon in the event of any significant change in any of the essential supporting facts.

(b) A finding made pursuant to this part may be amended or revoked by the Administrator at any time upon his own motion or upon written request of any interested person setting forth reasonable grounds therefor. Before taking such action, the Administrator shall afford opportunity to interested persons to present their views and shall give consideration to any relevant information that they may present.

§ 551.8 Definitions.

As used in this part:

(a) *Secretary* means the Secretary of Labor.

(b) *Administrator* means the Administrator of the Wage and Hour Division, United States Department of Labor.

(c) *Finding* means a finding made pursuant to section 13(b)(11) of the Fair

Labor Standards Act as provided in this part.

(d) *Making local deliveries* includes the activities customarily and regularly performed in the physical transfer, to customers of a business establishment situated within the rural or urban community or metropolitan area in which the establishment is located, of goods sold or otherwise disposed of to such local customers by such establishment. Included are activities performed by the driver or driver's helpers as an incident to or in conjunction with making such deliveries, such as picking up and returning the delivery vehicle at the beginning and end of the workday, cleaning the vehicle, checking it to see that it is in operating condition, loading and unloading or assisting in loading or unloading the goods, and picking up empty containers or other goods from customers for return to the establishment. Not included in the making of local deliveries are such transportation as the carriage of passengers; the transportation of any load of goods that would normally require a round trip longer than a single workday for delivery and return to the starting point; any movement of goods which does not accomplish a transfer of possession from one person to another; transportation of goods as a part of a process of production; and transportation of goods within a local community or metropolitan area as an integral part of a carriage of such goods from a point outside such community or area to a destination within it, rather than as a part of the activities customarily performed in making local deliveries, as defined in this section, in the same manner as deliveries of goods held locally for local disposition.

(e) *Employee employed as a driver or driver's helper making local deliveries* includes any employee who is employed in any workweek:

(1) To drive a delivery vehicle used in making local deliveries, or

(2) To assist the driver of such a vehicle in making such deliveries, being required to ride on the vehicle to perform such work,

and whose work in making local deliveries, as defined in paragraph (d) of this section, accounts for at least 80 percent of his hours of work in such workweek.

In making and applying any finding as provided in this part, no employee shall be considered to be employed as a driver or driver's helper making local deliveries in any workweek when more than 20 percent of his hours of work results from the performance of duties other than those included in making such local deliveries.

(f) A plan of compensation *on the basis of trip rates or other delivery payment plan* means any plan whereby employees employed as drivers or drivers' helpers making local deliveries are compensated for their employment on a basis such that the amount of payment which they receive is governed in substantial part by a system of wage payments based on units of work measurement such as numbers of trips taken, miles driven, stops made, or units of goods delivered (but not including any plan based solely on the number of hours worked) so that there is a substantial inducement to employees to minimize the number of hours worked.

(g) For purposes of determining whether and to what extent a plan of compensation on the basis of trip rates or other delivery payment plan has the effect of reducing the weekly hours worked by employees employed by an employer as drivers or drivers' helpers making local deliveries pursuant to such plan:

(1) The *most recently completed representative period of one year* (§ 551.2(c)) or *most recent representative annual period* (§ 551.5(b)(3)) shall mean a one-year period within which such employees were so employed on a regular full-time basis by such employer (or, if such employer has not previously used such plan, by another employer using the plan under substantially the same conditions, which period shall include a calendar or fiscal quarter-year ending not more than four months prior to the date as of which the effect of such plan is to be considered, together with the three quarter-year periods immediately preceding such recently completed quarter-year; and

(2) The *average weekly hours* or *average workweek* of the full-time employees so employed during such annual period shall mean the number of hours obtained by the following computation:

Wage and Hour Division, Labor

§ 552.2

(i) All the hours worked during such annual period by all the full-time employees regularly employed under the plan shall be totaled; (ii) the number of workweeks worked by each such employee during such annual period under such plan shall be computed, and the totals added together; and (iii) the average weekly hours, taken in the aggregate, of all such employees shall be computed by dividing the sum resulting from computation (i) by the sum resulting from computation (ii).

§ 551.9 Recordkeeping requirements.

The records which must be kept and the computations which must be made with respect to employees for whom the overtime pay exemption under section 13(b)(11) is taken are specified in § 516.15 of this chapter.

[35 FR 17841, Nov. 20, 1970]

PART 552—APPLICATION OF THE FAIR LABOR STANDARDS ACT TO DOMESTIC SERVICE

Subpart A—General Regulations

Sec.

- 552.1 Terms used in regulations.
- 552.2 Purpose and scope.
- 552.3 Domestic service employment.
- 552.4 Babysitting services.
- 552.5 Casual basis.
- 552.6 Companionship services for the aged or infirm.

Subpart B—Interpretations

- 552.99 Basis for coverage of domestic service employees.
- 552.100 Application of minimum wage and overtime provisions.
- 552.101 Domestic service employment.
- 552.102 Live-in domestic service employees.
- 552.103 Babysitting services in general.
- 552.104 Babysitting services performed on a casual basis.
- 552.105 Individuals performing babysitting services in their own homes.
- 552.106 Companionship services for the aged or infirm.
- 552.107 Yard maintenance workers.
- 552.108 Child labor provisions.
- 552.109 Third party employment.
- 552.110 Recordkeeping requirements.

AUTHORITY: Secs. 13(a)(15) and 13(b)(21) of the Fair Labor Standards Act, as amended (29 U.S.C. 213(a)(15), (b)(21)), 88 Stat. 62; Sec. 29(b) of the Fair Labor Standards Amend-

ments of 1974 (Pub. L. 93-259, 88 Stat. 76), unless otherwise noted.

SOURCE: 40 FR 7405, Feb. 20, 1975, unless otherwise noted.

Subpart A—General Regulations

§ 552.1 Terms used in regulations.

(a) *Administrator* means the Administrator of the Wage and Hour Division, U.S. Department of Labor, or the Administrator's authorized representative.

(b) *Act* means the Fair Labor Standards Act of 1938, as amended.

§ 552.2 Purpose and scope.

(a) This part provides necessary rules for the application of the Act to domestic service employment in accordance with the following amendments made by the Fair Labor Standards Amendments of 1974, 88 Stat. 55, *et seq.*

(b) Section 2(a) of the Act finds that the "employment of persons in domestic service in households affects commerce." Section 6(f) extends the minimum wage protection under section 6(b) to employees employed as domestic service employees under either of the following circumstances:

(1) If the employee's compensation for such services from his/her employer would constitute wages under section 209(a)(6) of title II of the Social Security Act, that is, if the cash remuneration during a calendar year is not less than \$1,000 in 1995, or the amount designated for subsequent years pursuant to the adjustment provision in section 3121(x) of the Internal Revenue Code of 1986; or

(2) If the employee was employed in such domestic service work by one or more employers for more than 8 hours in the aggregate in any workweek.

Section 7(l) extends generally the protection of the overtime provisions of section 7(a) to such domestic service employees. Section 13(a)(15) provides both a minimum wage and overtime exemption for "employees employed on a casual basis in domestic service employment to provide babysitting services" and for domestic service employees employed to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves." Section 13(b)(21)